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**IN THE  
COURT OF APPEALS OF INDIANA**

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RONALD HILL,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 49A05-0702-CV-94
	)	
ALBERT CABAGE,	)	
	)	
Appellee-Defendant.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Robert W. York, Judge Pro Tempore  
Cause No. 49D12-0205-CT-925

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**November 26, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Following a jury verdict arising from an automobile accident, Ronald Hill appeals the trial court's denial of his motion to correct error, raising two issues:

- I. Whether the jury's damages award was adequate; and
- II. Whether the evidence was sufficient to support the jury's fault apportionment.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 8, 2000, Albert Cabage was driving northbound on North High School Road turning left onto westbound West 38th Street in Indianapolis. While Cabage executed his turn, Felipe Aguilar was speeding southbound on North High School Road, entered the intersection as the light was turning red, and struck Cabage's vehicle. At the time, Hill was stopped at the light facing eastbound on West 38th Street. As a result of the collision, Aguilar's vehicle spun out and struck Hill's vehicle and pinned it into a pole on the side of the road.

Hill claimed to suffer several injuries including: bruises to his face, knee, and torso, a lacerated lip, a diaphragmatic hernia, back spasms, and back and neck pain. Dr. Terry Mandel found that Hill had a loss in the curvature of his spine, an abnormal gait, and a bruise on his head. Further, Dr. Mandel treated him with pain relieving medication and physical therapy and rated Hill with a six percent whole body impairment. Hill had \$9,263.64 in medical expenses and continues to suffer pain.

After trial, the jury determined Cabage and Aguilar were each fifty percent at fault for the accident and that Hill suffered \$9,161.64 in total damages. The jury multiplied Cabage's

percentage of fault by the total damages and awarded Hill \$4,580.82. Thereafter, Hill moved to correct error, and, after a hearing, the trial court denied his motion. Hill now appeals.

## **DISCUSSION AND DECISION**

### **I. Damages**

Hill claims that the jury's damage award was inadequate, and that the trial court erred in ruling on his motion to correct error. He asserts that we should grant a new trial or order additur. We review a trial court's decision on a motion to correct error for an abuse of discretion. *Allstate Ins. Co. v. Hennings*, 827 N.E.2d 1244, 1250 (Ind. Ct. App. 2005). This Court uses a strict standard when reviewing whether a jury's damage award is inadequate; we do not reweigh the evidence or judge the credibility of witnesses. *Buckland v. Reed*, 629 N.E.2d 1241, 1244-45 (Ind. Ct. App. 1994). A damage judgment will only be reversed "when it is apparent from the evidence that the damages assessed by the jury are so small as to convince us that the jury was motivated by prejudice, passion, partiality or corruption or else considered some improper element . . . ." *Id.* A jury is not required to award damages for pain and suffering. *Id.* "When there is evidence supporting the jury's verdict, the trial court is not permitted to set aside a jury verdict as clearly erroneous and order a new trial." *Karl v. Stein*, 749 N.E.2d 71, 82 (Ind. Ct. App. 2001).

In order to recover for medical expenses, the plaintiff must show that the expenses were both reasonable and necessary, and this is most often done through expert testimony. *Cook v. Whitsell-Sherman*, 796 N.E.2d 271, 277 (Ind. 2003). The jury is free to accept or reject an expert's testimony. *Noblesville Casting Div. of TRW v. Prince*, 438 N.E.2d 722, 731 (Ind. 1982).

Here, Hill presented his testimony and Dr. Mandel's testimony to support his damages. The total assessed damages were consistent with the evidence presented at trial. During trial, Hill claimed his hernia was the worst of his injuries. However, Hill never sought treatment for the hernia until a year and half after his last visit with Dr. Mandel, and Dr. Mandel's records lacked any reference to the hernia. When Hill was interviewed over a year after the accident, he never mentioned the hernia and only complained of neck, shoulder, and back problems. *Tr.* at 25, 26; *Ex. I.* Further, two other physicians, Dr. Kreike and Dr. Lappas, testified that Hill's hernia was likely longstanding and preexisting rather than caused by an isolated instance. *Tr.* at 260, 264 and 271.

Dr. Mandel's testimony was also inconsistent. Dr. Mandel testified that upon the conclusion of Hill's last visit with him, Hill had reached maximum medical improvement, yet Dr. Mandel later testified that Hill would need additional treatment equal to \$600 per year for five years. The jury was not required to award damages for pain and suffering and was not required to believe that Hill suffered permanent and disabling injuries. *See Buckland*, 629 N.E.2d at 1245. The jury's award of damage was consistent with the evidence, and the trial court's denial of Hill's motion to correct error was not an abuse of discretion.

## **II. Third-Party Fault**

Hill next contends that the evidence did not support the jury's apportionment of fifty percent of the fault to Aguilar and the trial court abused its discretion in denying his motion to correct error. Again, we review the trial court's denial of a motion to correct error for an abuse of discretion. *Hennings*, 827 N.E.2d at 1250. In order to determine whether the trial court abused its discretion, we must determine whether there were any facts to support the

jury's verdict. *Karl*, 749 N.E.2d at 82. In doing so, we do not reweigh the evidence or judge the credibility of the witnesses. *Buckland*, 629 N.E.2d at 1244-45.

Here, there was evidence in the record that Aguilar was speeding at the time he entered the intersection. The jury was free to conclude that this unlawful act contributed to the fault that caused the accident and Hill's resulting injuries. Hill requests this court to reweigh the conflicting evidence presented at trial, which, under our standard of review, we cannot do. The trial court did not abuse its discretion in denying Hill's motion to correct the jury's apportionment of fault.

Affirmed.

ROBB, J., and BARNES, J., concur.